

1 MAXWELL M. FREEMAN, #31278
LEE ROY PIERCE, JR., #119318
2 MICHAEL L. GUREV, #163268
THOMAS H. KEELING, #114979
3 FREEMAN, D'AUTO, PIERCE,
GUREV, KEELING & WOLF
4 A PROFESSIONAL LAW CORPORATION
1818 Grand Canal Boulevard, Suite 4
5 Stockton, California 95207
Telephone: (209) 474-1818
6 Facsimile: (209) 474-1245
E-mail: lrpierce@freemanfirm.com
7 mgurev@freemanfirm.com
tkeeling@freemanfirm.com

8 Attorneys for Defendants A.G. Spanos
9 Construction, Inc.; A.G. Spanos
Development, Inc.; A.G. Spanos
10 Land Company, Inc.; A.G. Spanos
Management, Inc.
11

12 IN THE UNITED STATES DISTRICT COURT
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14 National Fair Housing Alliance, Inc., et al.,)	CASE NO. C07-03255-SBA
)	
15 Plaintiffs,)	NOTICE OF MOTION AND MOTION
)	OF DEFENDANTS A.G. SPANOS
16 vs.)	CONSTRUCTION, INC., A.G. SPANOS
)	DEVELOPMENT, INC., A.G. SPANOS
17 A.G. Spanos Construction, Inc., et al.)	LAND COMPANY, INC., AND A.G.
)	SPANOS MANAGEMENT, INC. TO
18 Defendants.)	DISMISS PLAINTIFFS' COMPLAINT
)	

19 [Fed. R. Civ. P. 12(b)(6)]

20 Hearing Date: October 2, 2007

21 Time: 1:00 p.m.

22 Dept.: Courtroom 3

23 Complaint Filed: June 20, 2007

24 **TO PLAINTIFFS AND THEIR ATTORNEY OF RECORD:**

25 **PLEASE TAKE NOTICE** that on October 2, 2007, at 1:00 p.m., or as soon thereafter
26 as this matter may be heard, in Courtroom 3 of the above-entitled court, located at 1301 Clay
27 Street, 3rd Floor, Oakland, California, Defendants A.G. Spanos Construction, Inc., A.G.
Spanos Development, Inc., A.G. Spanos Land Company, Inc., and A.G. Spanos Management,
28

1 Inc. ("Defendants") will and hereby do move this court, pursuant to rule 12(b)(6) of the
 2 Federal Rules of Civil Procedure, for an order dismissing the claims of Plaintiffs National Fair
 3 Housing Alliance, Inc., Fair Housing of Marin, Inc. Fair Housing Napa Valley, Inc., Metro
 4 Fair Housing Services, Inc., Fair Housing Continuum, Inc. ("Plaintiffs") against Defendants.

5 The basis of this Motion, as set forth more fully in the accompanying Memorandum of
 6 Points and Authorities, is that:

7 **1. PLAINTIFFS' COMPLAINT FAILS TO ALLEGE FACTS SUFFICIENT TO**
 8 **ESTABLISH STANDING TO SUE UNDER THE ADA.**

- 9 A. Plaintiffs Do Not Claim To Be Members of a Protected Class under the ADA,
 10 Nor Do They Purport to Sue on Behalf of Any Member of a Protected Class
 11 under the ADA; Therefore, They Have No Standing to Sue.
- 12 B. Plaintiffs Do Not Allege Facts Sufficient To Establish the "Irreducible
 13 Constitutional Minimum" for Standing.
- 14 C. Plaintiffs Have Failed to Allege Facts Sufficient to Show Standing to Seek
 15 Injunctive Relief under Title III of the ADA.

16 **2. PLAINTIFFS' COMPLAINT FAILS TO STATE A CLAIM FOR RELIEF UNDER**
 17 **THE FHAA.**

- 18 A. Plaintiffs Have Not Alleged a Claim for Relief in Their Own Right
 19 Because Plaintiffs Are Neither Disabled Renters Nor Entities That Claim
 20 to Have Been Denied Rentals Against Because of Their Association With
 21 Disabled Persons.
- 22 B. Plaintiffs Have Failed To State a Claim For Relief Under the FHAA
 23 Because Plaintiffs Fail to Allege That These Defendants Are the Owners
 24 of the Subject Properties; Only Current Owners Are Liable Under the
 25 FHAA.

26 **3. PLAINTIFFS' COMPLAINT FAILS TO ALLEGE FACTS SUFFICIENT TO**
 27 **ESTABLISH STANDING TO SUE UNDER THE FHAA.**

- 28 A. Plaintiffs Do Not Claim To Be Members of a Protected Class under the
 FHAA, Nor Do They Purport to Sue on Behalf of Any Member of a
 Protected Class under the FHAA; Therefore, They Have No Standing to
 Sue.
- B. Plaintiffs Do Not Allege Facts Sufficient To Establish the "Irreducible
 Constitutional Minimum" for Standing.
- C. Plaintiffs Have Failed to Allege Facts Sufficient to Show Standing to Seek
 Injunctive Relief Under the FHAA.

4. PLAINTIFFS' ADA AND FHAA CLAIMS FOR RELIEF ARE BARRED BY THE
STATUTE OF LIMITATIONS.

1 A. The Continuing Violation Doctrine Does Not Apply to the Plaintiffs'
2 Untimely Claims.

3 B. Plaintiffs Cannot Aggregate Alleged Violations Into A Continuing
4 Practice.

5 This Motion will be based upon this Notice of Motion and Motion, the Memorandum of
6 Points and Authorities in support of this Motion, the Request for Judicial Notice filed in
7 support of this Motion, and the pleadings, orders, records and documents on file in this case,
8 as well as such oral and documentary evidence as may be properly presented at the hearing on
9 this Motion.

10 Opposition, if any, to the granting of the motion must be served and filed not less than
11 twenty-one (21) days before the hearing date. If the party against whom the motion is directed
12 does not oppose the motion, that party must file with the Court a Statement of Nonopposition
13 within the time for filing and serving any opposition. (See L.R. 7-3(a) and 7-3(b).)

14 Dated: August 15, 2007

FREEMAN, D'AIUTO, PIERCE, GUREV,
KEELING & WOLF

15 By 

LEE ROY PIERCE, JR.

16 Attorneys for Defendants A.G. Spanos
17 Construction, Inc.; A.G. Spanos Development,
18 Inc.; A.G. Spanos Land Company, Inc.; A.G.
19 Spanos Management, Inc.